
Water Transfer Program Plan

Responses to Comments

WATER TRANSFER PROGRAM PLAN RESPONSES TO COMMENTS

0. General Responses

WT 00-1

Requiring water suppliers to meet water use efficiency requirements in order to participate in a water transfer will not likely impede a water market. This requirement, as currently discussed in the Water Use Efficiency Program Plan, is that a water supplier will participate in urban or agricultural planning and implementation programs that are administered by the California Urban Water Conservation Council (CUWCC) and the Agricultural Water Management Council (AWMC). A key aspect of these programs focuses on the identification of feasible conservation measures, not necessarily the immediate implementation. Therefore, a water supplier could easily be in compliance with the council's process prior to implementing all feasible conservation measures. They would then be able to participate in a water transfer by acquiring water (buyer) until feasible conservation measures can be put in place or generating revenue (seller) to finance water conservation measures.

WT 00-2

The Water Transfer Program Plan does not attempt to estimate the potential volume of water that may be transferred under any particular market conditions. Not only is it extremely difficult to understand the reaction of buyers and sellers to market, water resource, and local conditions, it is also difficult to estimate how much water could physically be transferred in a given year because of capacity constraints. The Water Transfer Program is intended to resolve issues regarding the functions of a market: operational and technical rules; third-party resource protections, and conveyance opportunities. The Preferred Program Alternative does not include any specific transfer as part of the Water Transfer Program. (Other elements of the CALFED Bay-Delta Program [CALFED Program], such as the Ecosystem Restoration Program, do identify water transfer actions. These actions will obtain temporary water supplies for in-stream flow purposes and will be subject to project-specific environmental compliance when willing sellers are identified.)

WT 00-3

Water transfers are based on the premise of a voluntary transaction between a willing seller and a willing buyer. Transfers on this basis have been occurring for several years. The Water Transfer Program simply seeks to improve the structure in which this current water transfer market operates. CALFED is not in the business of developing specific water transfer proposals (except for programs funded through CALFED that may seek to purchase water from willing sellers to augment in-stream flows). Specific transfer proposals will continue to be developed by local interests interested in participating in a water market.

CALFED is not attempting to discourage or promote particular water transfers intended to move water from one area of the state to another. CALFED is not halting water transfers until such time as new storage is developed. CALFED is not implementing actions that would result in mandatory or uncompensated water transfers.

Many stakeholders have expressed concern that CALFED will promote transfers that violate water rights established in the California Water Code, adversely affecting both local surface water and groundwater resources.

This concern is groundless. The Water Transfer Program entails changes, clarifications, and enhancements to approval procedures, operational requirements (e.g., reservoir refill and carriage water requirements), and analysis and disclosure requirements. Nothing in the program changes existing water rights or other California Water Code provisions such as the “no injury” rule, authorizes inappropriate transfers, or stops appropriate transactions.

CALFED agencies with transfer approval jurisdiction intend to add a new condition that will require transfer proponents to provide an analysis of potential groundwater impacts. This information will result in increased understanding of groundwater impacts that may be associated with a proposed transfer and allow for approval, conditioning, or denial of the proposal by the appropriate regulating entity based on information that may have otherwise not been provided.

It should also be noted that, as of October 1999, Governor Davis has signed legislation (Senate Bill [SB] 970) that includes additional water rights protection provisions. The author of this bill, Senator Jim Costa, intended these provisions to provide additional water rights protection to those who offer their water for temporary transfer to other users, including the environment. The CALFED agencies believe that this bill sufficiently addresses the issue of whether additional water rights protection is needed. It should be noted that SB 970 also attempted to shorten and streamline the approval process administered by the State Water Resources Control Board (SWRCB).

WT 00-4

A viable water market exists today—“interim rules” already are in place. As discussed in Section 2 in the Water Transfer Program Plan, hundreds of thousands of acre-feet of water are transferred between various water users throughout the state each year. Nevertheless, certain problems with water transfers are yet to be fully resolved. In this context, the CALFED agencies developed the Water Transfer Program. The program focuses on resolving these problems while facilitating the further development of the water market.

For instance, statutes and rules governing water transfers exist at both the state and federal levels, but in the absence of case law or SWRCB precedent, everyone does not agree with their interpretation and application by the entities granted jurisdictional authority. CALFED has identified programmatic-level actions to clarify and standardize these rules. Because the rules are complex and each transfer situation is unique, it could take several months to years to make changes to the existing rules and procedures. In the meantime, deliberations at the SWRCB on specific water transfers may help to provide more immediate clarity on interpreting a few provisions of the California Water Code.

Additional related information is found in responses WT 4-7 and WT 4.5.1-2.

WT 00-5

CALFED is a consortium of state and federal agencies with water or environmental management responsibilities in the Bay-Delta system. Therefore, the decision makers of CALFED are the same agencies that are active in discussing water transfer matters in forums outside CALFED. As part of CALFED, these same agencies are working together to better define and disclose their water transfer policies and procedures, thus allowing CALFED to find opportunities for improvement. However, as CALFED works toward solutions, stakeholders continue to bring water transfer issues before the SWRCB and the California Legislature, hoping for rapid changes to be implemented. Unfortunately, these actions take time and energy away from these same agencies participating as part of CALFED. In the absence of specific policy direction and/or authority to do otherwise, particular CALFED agencies will operate under their current policies and positions. CALFED's objective is to facilitate consensus that may lead to changes in these policies when and where they may be appropriate.

Performance criteria developed for the Water Transfer Program will consist of ensuring that actions identified in Section 4 in the Water Transfer Program Plan are implemented, including establishment and funding of a clearinghouse and adoption by state and federal approving agencies of additional impact disclosure requirements. In essence, a performance criterion could be developed for each of the actions listed in Section 4 in the program plan. These performance criteria should be able to be easily met and implemented.

As stated in other sections in the Programmatic EIS/EIR, the Preferred Program Alternative does not include land fallowing as a direct means of obtaining water supplies. Land fallowing, however, may result from locally initiated water transfer proposals, Ecosystem Restoration Program actions, and Levee System Integrity Program actions. Several of these actions are intended to improve habitat and levee integrity but are not included as a water supply measure. Any changes to the use of water associated with these lands would need to be discussed with the water rights holder at the time of the specific action.

The Programmatic EIS/EIR does not include a description of historical transfers and their benefits to both the buying and selling participants and regions, but substantial benefits for all parties can be achieved from properly designed and executed water transfers. Not only can a transfer provide a revenue stream for one-time capital expenditures, it can also provide a useful revenue stream to assist economic sustainability and regional water resource goals for a community—if proactively planned with the appropriate project “ownership.”

Water transfers involve a change in the use of water rights on a temporary or permanent basis. For transfers subject to SWRCB jurisdiction, the water rights holder must petition for a change. CALFED has no intention of changing this basic premise. Generally, a water user who is provided water through a water right held by a water supplier does not have the authority to transfer that water without the water rights holder’s (supplier’s) permission. In the case of the Central Valley Project (CVP), federal law allows for “user”-initiated transfers, but the U.S. Bureau of Reclamation (Reclamation), as a practical matter, still gives the district-specific oversight authority prior to federal approval.

Parties proposing water transfers need to be able to document how much water is to be made available for transfer and what action or actions are responsible for that availability. Such assessments require proponents to satisfy the queries of other legal users that “real” water is available. The best way to accomplish this is through comprehensive measurement systems that document water movement throughout a particular system—whether that be a reservoir, a district delivery system, or a farmer’s irrigation system. Documentation does not necessitate metering of every field delivery.

Water transfers are one of several water management tools included in the Preferred Program Alternative. CALFED is assuming that the current water market will continue to function and, with CALFED’s improvements, will be stronger in the future. However, other aspects of the Program do not depend on changes

to the existing water market. Even given the existing water market, CALFED's other actions will still be implementable and will move the State toward a long-term solution.

WT 00-12

Parties proposing water transfers need to be able to document how much water is available for transfer and what action or actions result in that availability. Such assessments allow proponents to demonstrate that "real" water is available. Water currently flowing to degraded groundwater or salt sinks is an ideal example of real water that can be conserved and made available to transfer. Other examples include reservoir reoperations, land fallowing, and conjunctive use. Regardless of the method used to make water available for transfer, the transfer must satisfy the California Water Code's "no injury" rule with respect to legal users of water, including in-Delta water rights holders.

WT 00-13

This comment speculates on the possible outcome of Phase 8 of the SWRCB's Bay-Delta proceedings. The Water Transfer Program Plan makes no assumption about any specific result of that proceeding with respect to water allocations. The program plan assumes only that a voluntary, willing seller/willing buyer water transfer market is part of the water management landscape in California and will continue to be an important tool for water management in the future. The program also acknowledges that water transfers in and of themselves do not create additional water supply, but they do play a role in a complete solution to the long-term water management problems of the state. This issue is also addressed in the components on water use efficiency, conjunctive use, and storage.

WT 00-14

The existing water market indicates that the price paid to the seller ranges from \$20 to \$200 an acre-foot. It is likely that increased competition for the limited amount of water made available by willing sellers will raise these prices. However, it is very unlikely that this price will increase so high that no one will be farming. This is primarily because of other options, such as water conservation, water recycling, and even sea water or brackish water desalting that become more competitive as the price for water on the market increases. These options also can be more reliable as a local supply and have other advantages over water transfers.

Furthermore, according to the Department of Water Resources' (DWR's) Bulletin 160-98, the demand for municipal and industrial (M&I) water will be about 40 percent of total agricultural use in 2020. Even if all M&I demand was met with agricultural transfers, it would not put agriculture out of business.

WT 00-15

The CALFED Program's proposal to in part condition the construction of new storage on making improvements in the structure of the water transfer market is likely to be satisfied by implementing the actions described in the Water Transfer Program Plan. There are no target quantities in this proposed condition. The condition could be satisfied, for instance, by implementing the water transfer information clearinghouse, clarifying definitions of transferable water, and having agencies adopt additional disclosure requirements.

The requirement to show efficient use by both the buyer and the seller in a water transfer transaction is based on the premise that all water users should be using water in the most efficient manner feasible (as discussed in the Water Use Efficiency Program Plan). This requirement would be satisfied by a seller being in compliance with planning and implementation guidelines developed and administered by the CUWCC and the AWMC.

Furthermore, CALFED is not involved in the Colorado River 4.4 Plan negotiations or in any legislation relating to it.

CALFED has included actions to improve the current California water market as one of several water management tools to help improve water supply reliability for all uses. Therefore, the working definition of a water market is simply that which exists already. CALFED is not trying to create a new market in order to shift substantial volumes of water from seller to buyers. Vast amounts of water do not need to be transferred for a “market” to exist. CALFED is trying to improve processes and protocols that provide the oversight in order to ensure that the existing market functions more effectively.

1.1 Why CALFED Has Included Water Transfers in the Preferred Program Alternative

Attachment 1 to the Water Transfer Program Plan lists the participants in the Bay-Delta Advisory Committee’s (BDAC’s) Water Transfer Work Group. The group met monthly for over a year, from August 1997 until November 1998. Although the participation of members listed in the attachment fluctuated, most were present at one or more of the 14 meetings held. This group was instrumental in helping to identify issues and constraints and to develop and discuss potential solution options.

The Water Transfer Program Plan does not propose any changes to current legal requirements for water transfers, except that specified information regarding a proposed transfer would be provided to the Water Transfer Clearinghouse and, in some cases, proponents may need to provide some additional impact assessments. The clearinghouse would not have any regulatory authority over a transfer (see response WT 4.4.1-10). The program plan recognizes that water transfers must be developed by local interests and will be subject to local control and approval, subject also to applicable federal and state law and the regulatory jurisdiction of the SWRCB.

1.2 The Role of Water Transfers in Water Management

As described in this section in the Water Transfer Program Plan, water transfers are considered to be one of many water supply management tools available to help resolve current water conflicts. Water transfers are based on the premise of “willing seller/willing buyer” and will continue to help meet water supply needs as hydrology and regulations continue to change. However, because markets are based on the willingness to sell, CALFED cannot readily predict the quantity of water that may be made available for sale under different conditions. Even without this information, the CALFED agencies believe that it is inaccurate to assume that water transfers are a threat to responsible planning. Responsible planning is a fundamental precept of the CALFED Program and, as a result,

CALFED has developed the Preferred Program Alternative that combines numerous complex and inter-linked actions to resolve a statewide problem. Additional related information is found in responses WT 1.2-8 and WT 4.4-2.

WT 1.2-2

The potential benefits offered by water transfers identified in this section in the Water Transfer Program Plan are not applicable in all cases nor in all regions of the state. Each benefit, however, is a legitimate one that has been achieved by one or more transfers in the past. CALFED does not assume that any future water transfers would provide all of these benefits. Benefits will be case specific. In other words, some water transfers will be based on actions that do not reallocate one beneficial use for another (for example, conservation of flows to saline sinks), while other transfers are basically a reallocation of one use of water to another. Regardless of the type of transfer, all water transfers are subject to state and federal laws intended to protect other legal water users (including groundwater users) and the environment from adverse impacts due to the transfer.

Furthermore, CALFED recognizes that water transfers are not a source of “new” water. Rather, they are a mechanism to allow water to move between water rights holders and other users, including the environment. Refer to response WT 1.2-4 for additional information.

WT 1.2-3

As described in this section in the Water Transfer Program Plan, one of the primary benefits of water transfers is “helping to relieve the mismatch ... by moving water available in one area to satisfy needs in another area.” This is a broad description for allowing the reallocation, on a temporary or permanent basis, of water diverted for one use to be transferred for use elsewhere. Transfers shift existing water uses and generally do not result in additional diversions from the environment, although they can result in a change in the timing of those diversions. (For instance, if some water currently diverted to export regions for agricultural uses was transferred to an urban use [also in the export area] through land fallowing or conservation activities, future demands for increased export diversions to meet growing urban needs could be reduced, although existing diversions levels would remain constant.)

This also means that water transfers can provide water for other uses within the same basin. Transfers do not necessarily result in water moving out of a basin.

WT 1.2-4

Water transfers are simply the legal mechanism to move water between legal users of that water. If conservation efforts reduce evaporation or reduce water flowing to unusable groundwater sources, it is the conservation effort that creates the “new” water, not the transfer activity. This is an important distinction. The statutes and policies that govern water transfers are based on how the water is made available to transfer, not on the simple fact that there is a “transfer.” For instance, water quantities expected to be made available through conservation, land fallowing, reservoir reoperation, contract entitlement shifts, or other mechanisms need to satisfy particular tests to ensure that those quantities truly exist and that they can legally be transferred from one user to another. CALFED agrees that many mechanisms can create new water, but it is not the transfer that does so. It is the method employed by the water user to implement a change in the place of use. The SWRCB treats a transfer proposal as an application for a “change” of a water right. The transfer is simply the mechanism to move the water made available through some action.

WT 1.2-5

CALFED agrees that water transfers can result in the movement of water between uses with different economic values. However, CALFED is not trying to direct a certain type of market. A market needs to operate with relative freedom to allow the value of water to users and the State's economy to determine who is willing to sell, who is willing to buy, and at what price. The Water Transfer Program is improving the framework within which this market will continue to function (the policies, rules, and protocols). Some water may be transferred from "low-value" uses to "high-value" uses, if the willingness exists. This is a difficult scenario to evaluate in a programmatic document. Therefore, the Water Management Strategy refinement process may be the more appropriate location to perform different "willingness to sell" scenarios. This work is already underway and is envisioned as a tool for helping to make decisions during Stage 1.

WT 1.2-6

The CALFED agencies do not believe that all water currently put to beneficial use in the Sacramento Valley will be transferred to areas outside the Sacramento Valley. However, one of the Water Transfer Program objectives is that more analysis and disclosure of potential impacts, including cumulative impacts, of water transfers be part of the public debate on specific transfer proposals.

WT 1.2-7

Water transfers can be designed to operate on several different time frames. One-year, annual long-term, optional shortage contingencies, and permanent transfer of water rights are all examples. The Owens Valley example cited by many stakeholders as a reason to be concerned with protecting water rights is actually an instance of a permanent sale of water rights. Although the permanent transfer of water rights may still occur, the majority of transfers that have been happening and are anticipated by buyers and sellers are 1-year transfers and various types of long-term arrangements with life spans of 5, 10, or 20 years. The current transfer provisions in the California Water Code specify that transfers of this sort do not change the underlying water rights.

Furthermore, as of October 1999, Governor Davis has signed legislation (SB 970) that includes additional water rights protection provisions. The author of this bill, Senator Jim Costa, intended these provisions to provide additional water rights protections to those who offer their water for sale—helping to further ensure that water rights held by many northern California interests would not be put at risk by offering water for temporary transfer to other users, including the environment. The CALFED agencies believe that this bill removes the need for additional water rights protections.

WT 1.2-8

Water transfers will continue to be governed by California water rights law. Actions taken by the United States or other countries under agreements such as the North American Free Trade Agreement will not undermine the State's system of water rights.

1.2.1 Relationship to Other Programs

WT 1.2.1-1

As described in this section in the Water Transfer Program Plan, the CALFED agencies believe that storage and conveyance must be enhanced to allow transfers to play an optimal role in statewide water management (this enhancement is described more fully in the Phase II Report). However, even without improvements in storage

or conveyance, CALFED intends to resolve issues that constrain the existing transfer market, including such issues as third-party impacts, operational rules, and approval processes.

WT 1.2.1-2

As described in this section in the Water Transfer Program Plan, the Preferred Program Alternative includes several mechanisms to ensure that water is available for augmenting in-stream flows or for improving the health of fisheries. One such mechanism is water transfers—purchasing water from a willing seller. The Water Transfer Program is improving the framework within which transfers operate. The transfer program, however, is not where specific water transfer needs are discussed. These and other mechanisms, including regulatory actions, fish screens, flexibility in Delta operating standards, the Environmental Water Account, and habitat restoration—to name a few—are discussed in other parts of the Preferred Program Alternative. The Water Transfer Program is evaluating additional mechanisms described in Section 4 in the Water Transfer Program Plan, such as improved tracking and monitoring protocols for water transferred to the environment and the possibility of establishing additional protections for in-stream flows. CALFED sees water transfers and improvements in the water transfer framework as one tool to be used in achieving the goal of a healthy ecosystem.

2. Water Transfers Defined

WT 2-1

As discussed in the sidebar in this section in the Water Transfer Program Plan, CALFED is not in the water transfer business. Because of the Program's focus on the structure and operation of the water market, analysis of specific water transfers is not appropriate in this programmatic environmental document. As willing sellers and willing buyers continue to come together, individual transfer proposals will need to comply with state and/or federal regulatory and environmental requirements. At such time, these transfers will necessarily undergo more detailed analysis to ensure that water rights are protected, third-party impacts are appropriately handled, and environmental impacts are avoided or mitigated.

2.1 Water Transfer Law and Policy: State and Federal

WT 2.1-1

The overview of water transfer law in this section in the Water Transfer Program Plan was intended to be just that, an overview. CALFED will consider expanding some aspects of the overview to try to articulate Central Valley Project Improvement Act (CVPIA) provisions and how they interact with state law, and to explain the definition of “imported water” as used by the SWRCB.

WT 2.1-2

The CALFED Program does not have any legal or regulatory jurisdiction over transfers or over the application of the “no injury” rule in state law. CALFED does not intend to recommend changes to the current system of water rights as defined in the California Water Code. The program plan recognizes and attempts to describe how Water Code sections such as the “no injury” rule are generally applied by the regulatory agencies.

Individual water transfer proposals will be subject to applicable federal and state law and, in some cases, the regulatory jurisdiction of the SWRCB. The SWRCB has no authority to directly address groundwater rights but does consider impacts on groundwater users as part of its evaluation of “no injury” for specific water transfer proposals.

Furthermore, provisions in the Water Code do require water transfer proposals to satisfy groundwater management requirements as one aspect of approval (for instance, Section 1745.10). Most proposed transfers do not fall under these provisions, however.

To help with this situation, as stated in Section 4.4.2 in the Water Transfer Program Plan, CALFED is recommending that agencies with review authority require transfer applicants to provide groundwater impacts assessments prior to review of the application. This disclosure requirement is intended to provide analysis when it otherwise may not be required.

WT 2.1-3

The CALFED Program does not have any legal or regulatory jurisdiction over transfers or over the application of the “no injury” rule in state law. CALFED does not intend to recommend changes to the current system of water rights as defined in the California Water Code. Individual water transfer proposals will be subject to applicable federal and state law and, in some cases, the regulatory jurisdiction of the SWRCB. CALFED is not intending to promote one type of transfer over another.

3.3 Environmental, Socioeconomic, and Water Resources Protection

WT 3.3-1

The potential solution options identified for each issue in this section in the Water Transfer Program Plan were developed through numerous stakeholder and inter-agency meetings. The strategic plan of action to resolve each of these issues is described in Section 4 in the program plan. For each issue, only one solution option was brought forward. The selected option was the result of many months of stakeholder and CALFED agency meetings and discussions. The solutions chosen typically do not fully satisfy all stakeholders and CALFED agencies. They do, however, represent consensus solutions that provide some satisfaction to all parties. Most of these actions will not require legislation and can be implemented within the existing framework of laws, statutes, and policies.

3.3.1 Third-Party Socioeconomic Impacts

WT 3.3.1-1

The potential for third-party water quality degradation in export areas due to low-quality source water transferred into the area is limited. This concern is generally resolved through requirements placed by the approving agency (DWR, Reclamation, or SWRCB) on the source water provider to meet particular water quality requirements. For instance, prior to directing transferred water into the California Aqueduct, DWR requires the proponent to ensure that the water being introduced passes particular water quality standards. Water quality requirements such as these are generally the rule. In some situations, however, the approving agency may allow the standards to be violated, which may result in some impacts. These circumstances will continue to be handled on a case-by-case basis and do not lend themselves to a universal solution.

3.3.2 Groundwater Resource Protection

WT 3.3.2-1

The CALFED Program has developed a set of conjunctive use principles that articulate the need for local ownership, local involvement, and local acceptance of conjunctive use projects—including a need to adequately address third-party concerns. These principles can be found in the Phase II Report.

3.3.5 In-Stream Flow (Section 1707) Transfers

WT 3.3.5-1

Water Code Section 1243 provides that the use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. When the SWRCB receives an application to appropriate water for other beneficial uses, the SWRCB must notify the California Department of Fish and Game (DFG), which may make recommendations to the SWRCB regarding the amount of water required for the preservation and enhancement of fish and wildlife resources. Pursuant to Sections 1243 and 1243.5 and the recommendation received from DFG, the SWRCB may impose conditions on a permit or license for the preservation or enhancement of fish and wildlife. However, Section 1243 does not authorize the SWRCB to receive an application or issue a permit for an in-stream appropriation. An appropriative water right requires a diversion of water for some reasonable and beneficial use.

Section 1707 provides that a water user entitled to the use of water, under any type of water right, may petition the SWRCB for a change in purpose of use to preserve or enhance wetlands, fish, wildlife or recreation in or on the water. The proposed use does not require a diversion of water. The SWRCB must make certain findings to approve a Section 1707 change petition, including no increase in the amount of water used and no unreasonable effect on another legal use of water. A Section 1707 transfer could result in the dedication of water held under any type of water right to environmental purposes. Presumably, this could reduce the amount of water available for downstream users, depending on the place and purpose of use of the water (for example, Delta outflow). The SWRCB would need to make a finding that any such reduction in availability does not constitute an “unreasonable effect” on another legal user of water.

3.4.1 Transferable Water and the “No Injury” Rule

WT 3.4.1-1

Several California court decisions over the past few decades have confirmed that the importer of water into an area retains the right to use return flows and the right to capture and use imported water that has percolated to the underground. This is in essence the concept of water banking. However, California law also distinguishes between the use of groundwater on overlying lands and the appropriation of groundwater for use on, or transfer to, nonoverlying lands. Such use is treated as an appropriation of groundwater and has a lower priority than overlying use of groundwater. The water transfer rules of the CVPIA and the provisions in CVP water service contracts appear to be consistent with these concepts.

Regarding return flows, CVP contracts typically provide that the United States retains the right to all seepage and return flows that leave the contractor’s service area while recognizing the right of the contractor or those claiming under the contractor to make reasonable and beneficial use of such water. Reasonable and beneficial use of such water could include the transfer of such water but only if the water were otherwise transferable under State law—which, in most cases, is subject to the “no injury” rule (i.e., that the transfer of the water should not injure another legal user of water.)

It would appear that the potential for conflict between the federal and state law would arise not when the contractor or a water user of the contractor proposed to transfer a saved return flow, but rather when the return flow leaves the contractor’s service area and a downstream user claimed a right to such water as abandoned or unappropriated against a claim of the United States that such water was still CVP water under the control of Reclamation.

With respect to groundwater, CVP contracts have typically provided, somewhat indirectly, that project water, once it has percolated to the underground, is no longer considered to be CVP water when it is pumped and used by overlying landowners. The provision in question specifically deals with the case where groundwater is pumped and used on lands that are not eligible for CVP water. By providing that such use is not deemed to be a furnishing of project water to an ineligible user, the contract establishes the clear implication that water applied under a CVP contract, once it has become percolating groundwater, is no longer project water. At that point, consequently, state law on groundwater applies rather than any rules of federal law or contract.

As noted above, the transfer of groundwater—if the place of use is not on overlying lands—is generally treated as an appropriation of groundwater. As a general rule, only water surplus to the needs of the overlying users can be appropriated (transferred) or used on non-overlying lands. In an area where overlying use exceeds the safe yield of the groundwater basin, no groundwater is available for appropriation or transfer, irrespective of the original source of the groundwater. Note that this is not inconsistent with the idea that the importer of water retains the right of use of such water, even after it has percolated to the underground, only that the importer of such water may not have the right to transfer such water to non-overlying lands. There are, of course, exceptions to these rules, particularly in certain southern California basins, where the rules of mutual prescription have been applied or where the groundwater basin has been adjudicated.

The application of these rules do not preclude the scenario posited in the comment wherein a CVP or SWP contractor takes measures on a district-wide basis to reduce the total amount of deep percolation resulting from application of project water and then transfers the saved contractual entitlement. However, in many cases, such a transfer would be subject to the “no injury” rule of Water Code Sections 1702, 1706, or 1725. This is a function of state law, not federal rules, as the comment suggests. It should also be noted that, in general, one of the original purposes of the CVP, particularly in the San Joaquin Valley, was to operate on a conjunctive use basis (i.e., to provide surface water in years of surplus so that local water users could conserve their groundwater for use in dry years). The comment suggests that, but does not make clear how, federal water transfer rules are not consistent with project purposes.

The comment also suggests that the development of a water transfer market would be encouraged or promoted by treating the pumping and usage of groundwater incidentally recharged by the application or delivery of project water to a CVP contract service area as a use of project water, and charging for such water at the project water rate. It is not clear how this could be consistent with state law. Neither the state nor the federal government has any jurisdiction (with the exception of groundwater basins adjudicated under state law) to regulate or manage the extraction of groundwater; as noted above, once the applied water has percolated to the underground, it loses any characteristic of project water. As the comment notes, there are cases where local agencies, pursuant to state law, manage their own groundwater basin, including the impositions of pump taxes or benefit assessments. Nothing in the CVPIA or the CVP water service contracts prohibits CVP contractors from implementing these same kinds of programs. In fact, one of the examples cited in the comment is a CVP contractor.

WT 3.4.1-2

CALFED did not create the definitions or rules for saved or conserved water or the concept of “real water.” This section in the Water Transfer Program Plan attempts to objectively describe how the existing law is interpreted and applied by the agencies (primarily, the SWRCB, DWR, and Reclamation) with varying degrees of jurisdiction over water transfers. The CALFED Program does not have any legal or regulatory jurisdiction over transfers or over the application of the “no injury” rule of state law. The program plan recognizes and attempts to describe how the “no injury” rule is generally applied by the regulatory agencies. The program plan specifically recognizes the difference in opinion among various interests as to how the “no injury” rule should apply to some types of transfers and the differences in viewpoints about the transferability of saved or conserved water. The intent of the

program plan is to identify and describe these issues and to propose solutions or solution processes that will facilitate the further development of the already existing water transfer market, while protecting local water rights and interests. Solutions are presented in Section 4 in the Water Transfer Program Plan, not in Section 3.

The comment accurately states the problem of interpretation of Water Code provisions by noting that, in the Sacramento Valley, tailwater or return flows that are not recaptured for direct use by the diverter generally return to the system. This fact directly highlights the problem of transferability of saved or conserved water, since one of the tests of transferability is whether the water would be used downstream in the absence of the transfer (i.e., would return to the system). If so, the “no injury” rule is applicable and the transfer could not be approved. The comment states an interpretation of the “no injury” rule that is inconsistent with the interpretation made by the SWRCB. Not all conserved or saved water is transferable. Saved or conserved water may be transferable if it meets the transferability tests of other provisions of California water law, such as the “no injury” rule. The seniority of a water right is irrelevant to the determination of the applicability of the “no injury” rule.

3.4.3 Operations Criteria and Carriage Water Requirements

WT 3.4.3-1

CALFED agrees that the following statement (on page 3-11 in the June 1999 Water Transfer Program Plan) is not completely accurate and has deleted the sentence from the final document:

“The conveyance of transferred water may reduce Delta outflows, thereby requiring additional releases from storage to maintain compliance with operating criteria.”

3.4.4 Reservoir Refill Criteria

WT 3.4.4-1

The Water Transfer Program Plan accurately states that “Transferors of stored water contend that their actions do not cause harm to other legal users of water.” The CALFED agencies believe that the issue descriptions adequately portray the issue. More emphasis should be placed on considering the solutions discussed in Section 4 in the program plan. The CALFED agencies are committed to standardizing the application of refill criteria through stakeholder interaction. This will occur early during Stage 1 implementation.

3.5.2 Priority of Transferred Water in New Facilities

WT 3.5.2-1

CALFED has not addressed this issue. Currently, the Preferred Program Alternative (see the Phase II Report) does not include a new conveyance facility. Therefore, discussions about how to pay for a portion of such a facility to be available for water transfers is premature. Also see response WT 4.6.3-1.

4. Program Framework

WT 4-1

The Water Transfer Program Plan is CALFED’s strategic plan to improve the framework within which the water market in California functions. Section 4 in the Water Transfer Program Plan describes several actions and processes for resolving issues. These are necessarily programmatic in nature, since the current phase of the

CALFED Program is also programmatic. As stated in response WT 00-4, the existing California Water Code provisions and articles of the 1992 CVPIA contain the “rules” governing current market functions. CALFED agrees that they need to be improved but disagrees that there is no viable market in the meantime. Many stakeholders have commented that they do not want the Water Transfer Program to adversely affect their current ability to transfer water.

CALFED agrees with the immediate need to continue to move toward resolution of all the issues described in Section 3 in the Water Transfer Program Plan. The actions and processes in Section 4 in the program plan describe the work plan that CALFED is following. Early implementation of some of these actions is feasible and is currently underway. Otherwise, implementation is expected during the early years of CALFED’s Stage 1. More detailed descriptions of many of the actions have been included in the Water Transfer Program Plan.

WT 4-2

As described for many of the actions identified in this section in the Water Transfer Program Plan, stakeholder involvement is critical to successful implementation of these actions. At this time, specific actions are described only at a programmatic level. This is in part because of the need for more stakeholder interaction to discuss specific components of each action. Plans for stakeholder involvement during Stage 1 are being developed and, in some instances, are moving forward. For example, CALFED is working with the Bay-Delta Modeling Forum to facilitate a public workshop in order to discuss appropriate modeling tools for estimating carriage water requirements. Consensus on a tool will be reached only after such stakeholder interaction. Other actions will require similar stakeholder involvement.

One of the reasons CALFED had limited stakeholder interaction during the few months prior to the release of the Water Transfer Program Plan was because of a need to facilitate inter-agency discussions on several key issues where CALFED agencies have jurisdiction. Clear disclosure of current interpretations by DWR and Reclamation on particular Water Code provisions is essential for engaging stakeholders in useful interactions. Stakeholder interaction will be increased for these types of issues during Stage 1 implementation.

WT 4-3

The concern is valid that CALFED agencies participating in the development of solutions for water transfer constraints have a conflict of interest, because they themselves participate in markets and have water rights to protect. However, these agencies also have legal authority and responsibility for water transfers under state and federal statute, and are required to be involved in the review and approval of water transfer proposals. CALFED hopes that actions described throughout this section in the Water Transfer Program Plan will help to eliminate these concerns. For instance, developing standard definitions for transferable water is an important objective but not very useful if those definitions are developed with absolutely no stakeholder interaction and debate. CALFED recognizes that the key to moving forward with a market is for all water rights interests to agree to standardized procedures for determining transferability. This task means that federal agencies buying water for streamflow would be subject to the same rules and definitions as local public entities. This task will not be easy and will require time and dedication by stakeholders to engage in objective discussions on such issues. As described in response WT 4-2, stakeholder interaction will be increased as we move into implementation stages. The actions described in the final Water Transfer Program Plan remain programmatic. Additional information is found in response WT 00-4.

Consistent terminology is vital to overcoming concerns about water transfers and allowing legitimate issues to be addressed. Through the implementation of actions described throughout this section in the Water Transfer Program Plan, CALFED will strive to build standard, mutually agreeable language for water transaction-related terms. This will most likely manifest itself through the development of a web-based water transfer application system, where adherence to and understanding of terms are critical to successfully inform water transfer interests about requirements, procedures, and protocols.

CALFED is not promoting a “free” water transfer market. The Water Transfer Program actions are intended to improve the structure of the current water market, including many regulatory protections and protocols. This section in the Water Transfer Program Plan fully describes the programmatic actions CALFED will implement during Stage 1 (after the signing of the Record of Decision [ROD] on a Final Programmatic EIS/EIR).

The actions listed in this section in the Water Transfer Program Plan are intended to result in similar improvements to the current water market.

CALFED agencies, especially DWR, Reclamation, and SWRCB, are all actively participating in developing CALFED’s Water Transfer Program. These agencies are committed to resolving differences, improving coordination, and working with stakeholders to make necessary improvements in the existing water market framework.

4.1 Objectives Governing the Development of Solution Options

CALFED agrees that criterion number 3 on page 4-2 in the June 1999 Water Transfer Program Plan should state that “Water rights of any legal user must not be impaired.” This change has been incorporated.

The objectives and criteria included in this section in the Water Transfer Program Plan already embody this principle.

4.4 Environmental, Socioeconomic, and Water Resources Protection Solutions

As part of the effort to facilitate in-stream transfers under Water Code Section 1707, CALFED is developing improved tracking and monitoring protocols to ensure that water designated for a particular downstream purpose reaches its destination. California water system law recognizes that multiple uses and benefits can be realized from the same water. The water appropriation system allows downstream legal users of water to divert and put to beneficial use any water that has been returned to a water system (abandoned) by an upstream water user. CALFED will

formalize when and how those transferring water to the streams can use this provision to protect their investments.

In addition, all water transfer proposals that involve local agency action or review by state or federal agencies need to comply with appropriate environmental impact assessment requirements. This legal requirement will not be affected by actions of the Water Transfer Program and, in many instances, should be enhanced.

WT 4.4-2

Actions included in this section in the Water Transfer Program Plan are intended to increase the level of protection for third-party interests and improve understanding of water transfer benefits and impacts. Actions such as potential additional analysis could seem counter-productive to proponents, but they are really intended to address the realities, fears, and perceptions of third-party and source area interests. CALFED is concerned that a lack of information and understanding of transfer impacts result in further barriers to viable water transfers. However, this same lack of information can allow irresponsible transfers to be approved, resulting in unnecessary impacts to local resources. It is CALFED's belief that by being more forthright with information, transfer proponents can alleviate many third-party concerns—by fully disclosing what may happen to local resources and how such impacts will be avoided or mitigated. A water transfer market cannot function efficiently without a free flow of information among transfer proponents and third-party interests. CALFED's actions move toward that long-term objective of a regulated and protective market that will provide local benefits, as well as benefits to the buying and selling entity and region.

WT 4.4-3

CALFED agrees that water transfers should not result in significant, unmitigated impacts on low-income farm workers. However, CALFED does not agree that a federally or state-mandated "tax" paid by proponents would facilitate a water market; it may instead create an obligation that would discourage desirable transfers. (CALFED, however, does not have any authority over local entities that are able to enact requirements, such as a tax.) CALFED intends that efforts of the clearinghouse will help reduce the potential for adverse impacts to local work forces by facilitating research and development of mitigation "tool boxes." Project-specific mitigation may or may not include fees to be paid. A universal tax is inappropriate.

WT 4.4-10

This response has been consolidated with response WT 4.4.1-10. Please refer to this response for an answer to your comment.

4.4.1 Water Transfers Information Clearinghouse

WT 4.4.1-1

As discussed in this section in the Water Transfer Program Plan, a clearinghouse would be created to perform several functions. Through the facilitation and development of impact assessment tools and mitigation strategies, the clearinghouse will be able to help third parties to ensure that their interests are considered in the evaluation of water transfer proposals. The clearinghouse will develop a "toolbox" of mitigation strategies that will be useful to local interests concerned about transfer impacts. The clearinghouse will also facilitate research regarding the cause/effect relationships between changes in water management as a result of transfers and attributes such as local groundwater resources, terrestrial habitats, and job base. The clearinghouse will also ensure that all information

regarding a proposed transfer is publicly disclosed, so that local, state, and federal entities are better enabled to make decisions with a full understanding of the proposed transfer.

WT 4.4.1-2

As referred to in this section in the Water Transfer Program Plan, the Comprehensive Monitoring, Assessment, and Research Program (CMARP) concurs with the need for development of baseline hydrologic surface water and groundwater information. Through the CMARP and the information clearinghouse, such information will be developed. This type of general information should provide transfer proponents as well as local interests with a broader understanding of basic configurations and relationships of their local water resources. Additionally, monitoring of specific water transfer projects will need to be included as part of each water transfer proposal. One way to ensure that this information is included is by developing mitigation and monitoring tools, as described in response WT 4.4.1-1, for use by project proponents and local and state agencies with jurisdiction over a specific water transfer.

WT 4.4.1-3

The term “if necessary” in this sentence refers to whether the proponent needs such a toolbox of mitigation strategies. The clearinghouse will include a toolbox to be used by proponents “if necessary.”

WT 4.4.1-4

The clearinghouse described in the Water Transfer Program Plan will assist with disclosure of information through the use of a web site. As applications are submitted to DWR, SWRCB, and/or Reclamation, the agencies will forward the information to the clearinghouse for posting. (Currently, not all transfers are under the jurisdiction of the SWRCB and may not be adequately noticed.) It will continue to be the responsibility of local interests to monitor this information, to ensure that they know about proposed transfers that may affect them. The clearinghouse may also provide a public forum, or ensure that one is provided, for a public discussion of proposed transfers, as needed.

Legislation recently signed into law by Governor Davis (SB 970) adds provisions to the California Water Code that impose some additional noticing requirements on transfer applicants.

Additional information is found in responses WT 4.5-1 and WT 4.5.1-1.

WT 4.4.1-5

The clearinghouse will assist with developing a better understanding of the relationships between water sources, transfers, and various “externalities” (for example, third-party impacts). Improved understanding should help to ensure that water transfers occur when there is appropriate support for them and that necessary impacts are mitigated. The Water Transfer Program, however, is based on the current system of water rights in California; current law does not require that water rights holders be responsible for all impacts of a transfer. CALFED anticipates that, by development and disclosure of better information and research findings, impacts that may occur from a water transfer are better known and issues about responsibility can be more easily resolved.

WT 4.4.1-6

CALFED agrees that disclosure of environmental impact information associated with a proposed transfer—regardless of its intended use for agricultural, urban, or environmental purposes—is necessary. It is the

intent that the clearinghouse, upon receipt of a proposal, would post all relevant information, including all impact reports, on a web site for public review. This posting is simply for disclosure purposes and does not initiate any formal public review process. The reviewing and approving agencies (DWR, SWRCB, and Reclamation) would provide the appropriate public involvement forums in accordance with existing legal requirements. In addition, the web site will post all transfers, regardless of their purpose, when they are formally accepted for review by an oversight agency.

WT 4.4.1-7

Any models developed or facilitated by CALFED to improve our collective understanding of groundwater and surface water interactions would necessarily be directed toward specific basins or groups of basins. CALFED does not intend that one Central Valley model be developed.

WT 4.4.1-8

The intra-district water transfers referenced in this section in the Water Transfer Program Plan are those that happen when water users within a district transfer their surface water among each other. This type of transfer is heavily practiced in districts such as Westlands Water District, a CVP contractor. CALFED does not see long-term cumulative impact potential from such transfers. They require only the approval of the water district and involve only water rights or water contracts that the district already holds. In recent years, Westlands Water District alone has experienced several thousand water transactions among its growers.

WT 4.4.1-9

The referenced statement from the Water Transfer Program Plan is included in a section on optional functions of a clearinghouse. The clearinghouse is not intended to be a new regulatory entity. Its primary function will be public disclosure of proposed water transfers. However, the clearinghouse includes optional functions that could be administered by clearinghouse staff on a contractual basis. The disclosure of information would be free to the public—analysis or interpretation of any information may need to be contracted for on an individual basis.

WT 4.4.1-10

The two functions of the clearinghouse are to:

- Disclose information on proposed transfers through an electronic medium (web site or other) for broader public access to the details of the transfer.
- Promote or facilitate data analysis of historical water transfers, and add new transfers to a database as they are approved to increase the overall understanding of relationships between water transfers and real or perceived impacts.

The clearinghouse has no regulatory function. The clearinghouse does offer an opportunity for DWR, SWRCB, and Reclamation to coordinate functions, standardize policies and procedures, and further streamline review periods.

4.4.2 Analysis Disclosure Requirements

WT 4.4.2-1

Water supply development by management of groundwater is a sound concept in many areas of the state. Generally referred to as conjunctive use or groundwater banking, this process allows existing groundwater resources to be managed to allow carryover of existing supplies or to produce additional water supplies—either for use locally to meet growing needs or for temporary transfer. The potential for such projects varies throughout regions of the state. If a project is developed for transferring water to another user, either directly or in combination with a surface water supply, the Water Transfer Program recommends that approving agencies require the seller to satisfy certain additional analysis and disclosure objectives. These requirements, discussed in Section 4.4.2 in the Water Transfer Program Plan, should result in a transfer being developed and conditioned such that local groundwater users are not adversely affected.

The CALFED agencies consider it inappropriate to limit local entities who wish to develop conjunctive use projects for the local management of groundwater resources. Therefore, the program, including the conjunctive use actions and principles described as part of the storage component of the Preferred Program Alternative (see the Phase II Report), does not contain any actions to stop the transfer of groundwater out of a “basin” simply because of failure to increase storage in the statewide system. CALFED is advocating locally developed conjunctive use projects to include monitoring and mitigation mechanisms as key aspects of their projects in order to gain local acceptance and ensure that local impacts, if any, are mitigated to acceptable levels.

Refer to responses WT 4.4.1-1 and WT 4.4.1-2 for additional information on providing increased protection for groundwater interests and improving our understanding of groundwater systems.

WT 4.4.2-2

CALFED is recommending that agencies with jurisdiction over proposed water transfers begin to require additional impact assessments as part of an application to transfer. Local socioeconomic impacts, cumulative impacts, and groundwater impacts will be part of the information provided and publicly disclosed by the proponents. In addition, all proposed transfers will need to satisfy applicable state or federal environmental compliance requirements, regardless of the proposed use of the transferred water. The CALFED agencies think that all transfers should be subject to the same review criteria and analytic requirements. The proposed actions reflect that view.

WT 4.4.2-3

As described in this section in the Water Transfer Program Plan, CALFED has included an action recommending that approving agencies require additional impact assessments to be provided by the proponent at the time of applying for approval for a proposed water transfer. These requirements include socioeconomic impact analysis, cumulative impact analysis, and groundwater impact analysis. The level of analysis will vary with the type of water transfer (for example, a fallowing transfer needs to address socioeconomic impacts more than a reservoir reoperation transfer would) and the local socioeconomic and hydrologic conditions.

4.4.3 Solution Process for Environmental Protection Issues

WT4.4.3-1

CALFED agrees with the need to recognize the legal rights and benefits associated with multiple uses. The intention of this solution process is to develop protocols so that in-stream flow transfers are more likely to be implemented for multiple uses. California water law recognizes that multiple uses and benefits can be realized from the same water. The water appropriation system allows downstream legal users of water to divert and put to beneficial use any water that has been returned to a water system (abandoned) by an upstream water user. Initial efforts will focus on ensuring that in-stream flow transfers are clearly defined by purpose and destination, and by identifying who has the right to use the water at what point in the system. This will allow for more opportunities to benefit in-stream flows as well as diverted uses with the same transfer.

WT 4.4.3-2

CALFED will include a wide array of stakeholders in this process. Those with experience on similar issues will provide much needed insight and context.

4.4.4 Additional Water Rights Legislation

WT 4.4.4-1

In October 1999, Governor Davis signed legislation (SB 970) that includes additional water rights protection provisions. The author of this bill, Senator Jim Costa, intended these provisions to provide additional water rights protections so that those who offer their water for sale would not put their water rights at risk by temporary transfers to other users, including the environment. The CALFED agencies believe that this bill removes the need for additional water rights protections; CALFED therefore does not intend to pursue additional legislative action for this issue.

4.5 Technical, Operational, and Administrative Rules

WT 4.5-1

Many of the actions discussed in this section in the Water Transfer Program Plan are directed at clarifying and standardizing rules and procedures. Among these is a need for the SWRCB to clearly articulate the definition of a “basin” as used in many aspects of water transfers. The potential exists for rules to vary based on “in-basin” and “out-of-basin” uses, but only if there is a clear understanding of what a basin is. CALFED will facilitate this clarification as it implements the actions described in this section.

4.5.1 Solution Process to Resolve Transferable Water Definitions

WT 4.5.1-1

The concern about whether a proposed water transfer will adversely affect another legal user of water is hotly debated. The California Water Code contains several provisions directing agencies with jurisdiction to approve water transfers to approve a transfer only if other legal users of water are not adversely affected—known as the “no injury” rule. The question often debated is “Who is a legal user?” In some instances, return flows from an irrigation activity do not provide water to another legal water user; in even more instances, they do. In some instances, groundwater users have legal rights to water that has percolated into an aquifer; in other instances, they

do not. The Water Transfer Program, through implementation of the action described in this section in the Water Transfer Program Plan, will help to clarify the conditions that allow water to be transferrable. These conditions can depend on characteristics such as duration of the transfer, destination, underlying water rights, and how the water was made available to transfer (for example, by conservation or fallowing). This clarification can result in some transfers being viewed as an incentive to conserve, although this will not always be the case. Transfer rules reflect that a significant amount of the return flow generated by irrigation events generally returns to a surface water or groundwater source that is available to other legal users of water. However, opportunities to transfer conserved water without adversely affecting other legal water users do exist and should be facilitated by the implementation of the CALFED Program.

WT 4.5.1-2

As discussed in this section in the Water Transfer Program Plan, CALFED will continue to facilitate discussions to resolve transferable water issues. Stakeholder participation will be a key component of developing better definitions and interpretations of sections in the California Water Code where disagreement now exists. More facilitated stakeholder participation will occur in Stage 1, after the ROD is signed for the Final Programmatic EIS/EIR. It is CALFED's goal to ensure that all interests are fully represented during these discussions. The discussions will not impede the ability to continue to execute transfers under existing DWR, Reclamation, or SWRCB policies and procedures.

4.5.2 Clarification of Carriage Water Requirements

WT 4.5.2-1

CALFED had used the term “carriage water” in the most broad sense when describing actions to clarify additional flow requirements to allow cross-Delta water transfers. CALFED recognizes that several conditions governing the amount of “carriage” water need to ensure no impacts to other legal users of water. These conditions may be driven by salinity constraints, the export/inflow (E/I) ratio, biological requirements, or other Delta operational constraints.

The intent of this action is to clarify a standard method (or set of tools) that will be used to: (1) analyze what condition is most likely to be governing during a proposed cross-Delta transfer, and (2) approximate the quantity of water needed to meet requirements (if any). The purpose of this action is to provide transfer proponents with a tool, or at least knowledge of what tools will be used by approving agencies, for assessing carriage water requirements. This should allow the seller to appropriately include necessary limits, conditions, or other language in contracts with the buyer. Currently, little information is provided up-front to enable the proponent to reasonably assess this important portion of their water transaction.

4.5.3 Resolution of Reservoir Refill Criteria

WT 4.5.3-1

Reservoir refill criteria arise from the application of the California Water Code's “no injury” rule to stored water transfers as a unique situation applicable to the state and federal water projects. Refill criteria do not preclude the standard application of the “no injury” rule to other types of transfers.

Standardization of reservoir refill criteria is necessary to resolve an issue between reservoir operators and other legal users of water regarding the application of the “no injury” rule to stored water transfers. The need to ensure that refill does not occur at a time when in-stream flow pulses are needed is a valid concern, that will be addressed through project-specific environmental impact assessments. CALFED does not intend to complicate resolution of this issue with additional environmental requirements, when other regulations already provide this assessment and necessary mitigation.

4.5.4 Streamlined Approval Process for All Transfers

The actions discussed in this section in the Water Transfer Program Plan are intended to make application for and approval of water transfers more timely. CALFED is developing a web-based transfer application system that would provide all relevant information to applicants, to ensure that applications are complete when submitted and to fully inform applicants of all policies and criteria. This system will help to better inform proponents of what is required and ensure that reviewing agencies consistently apply their requirements (and that their requirements are fully understood by all parties).

The guidebook is currently available through the SWRCB (www.waterrights.ca.gov). The guidebook provides a useful overview of current water transfers policies and procedures. CALFED is working with the agencies with jurisdictional authority to review and approve transfers in order to make other improvements to the review and approval processes. These activities will require more stakeholder involvement as CALFED proceeds with implementation during Stage 1.

4.5.5 Expedited Approval Process for Some Transfers

The development of expedited approval processes cannot occur until other water transfers issues are resolved, especially the need to clarify when water is transferable. CALFED expects to involve stakeholders during Stage 1 implementation in looking for opportunities to expedite particular types of water transfers, possibly with the development of programmatic environmental compliance, similar to how Reclamation handles transfers within some of its delivery units.

4.6.1 Forecasting and Disclosure of Available Capacity in Existing Project Facilities

The action described in this section in the Water Transfer Program Plan is intended to improve on existing forecast disclosure mechanisms.

4.6.2 Evaluating Policies for Transporting Water in Existing Project Facilities

WT 4.6.2-1

This section in the Water Transfer Program Plan describes a process intended to improve predictability and reliability, if possible, for water transfer proponents to gain access in project conveyance facilities beginning early in Stage 1. CALFED recognizes that conveyance restrictions are a serious impediment to cross-Delta water transfers and that Program actions such as the Environmental Water Account will also be competing for any available capacity. These restrictions are often the result of necessary operational protocols.

4.6.3 Establishing Priority for Transfers in a New Conveyance Facility

WT 4.6.3-1

This section of the Water Transfer Program Plan was intended to address how to allocate capacity in an isolated facility. Actions such as those proposed in the Preferred Program Alternative are considered, for purposes of the Water Transfer Program, as improvements to “existing facilities” even though they may require new construction. We apologize for any misunderstanding. Discussions about improving access to “existing facilities” are called out as a CALFED action (see Section 4.6.2 in the Water Transfer Program Plan for details on how CALFED intends to proceed).

Also, CALFED has not considered that a portion of any new storage facility capacity would be dedicated to water transfers. That decision was assumed to be left to the owner of the storage facility (the local public entity, private company, or state or federal agency).

5. Implementation, Governance, and Finance Issues

WT 5.3.1-1

Water transfer proposals will continue to be subject to numerous requirements that may result in their approval, conditional approval, or denial. The Water Transfer Program is designed to ensure that all parties have a better understanding of the potential impacts related to particular transfers and that those impacts are avoided or mitigated prior to approval. Third-party interests should not be burdened with costs associated with water transfers.

WT 5.3.1-2

In reference to the third bullet on page 5-5 in the June 1999 Water Transfer Program Plan, the sentence has been modified to read:

“All agricultural and M&I water suppliers and users would benefit from environmental water transfers because, as environmental conditions improve, implications of regulatory conditions on water diversions should be reduced.”

Attachment A

WT A-1

CALFED's consensus-based effort resulted in CALFED's planning for the establishment of an information clearinghouse and recommending requirements for additional impact analysis (as described in Section 4 in the Water Transfer Program Plan). There was no consensus on establishing another regulatory entity to review water transfers.

Attachment 1

Bay-Delta Advisory Council's Water Transfers Work Group

(These people were on the mailing list, were sent updates and meetings notes, and may or may not have attended a meeting—addresses and names may no longer be current.)

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